

BEFORE THE UNITED STATES ARMY CORPS OF ENGINEERS

IN THE MATTER OF:

PROPOSAL TO REISSUE WITH
MODIFICATION THE MARYLAND
STATE PROGRAMMATIC GENERAL
PERMIT

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Wednesday June 14, 2006

Pursuant to Notice, the above-entitled
hearing was held before JANET VINE, CHIEF OF THE
REGULATORY BRANCH FOR THE BALTIMORE DISTRICT, at 1410
West Street, Annapolis, Maryland 21401, commencing at
7:00 p.m.

ALSO PRESENT:

BETH BACHUR

- - -

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P R O C E E D I N G S

MS. VINE: Good evening, ladies and gentlemen.

My name is Janet Vine. I'm Chief of the Regulatory Branch for the Baltimore District of the U.S. Army Corps of Engineers. Also with me here tonight is Beth Bachur, who is the Project Manager for re-authorizing the MDSPGP, or the Maryland State Programmatic General Permit.

I'd like to welcome you all here tonight, and thank you for attending this public hearing, and also like to thank the officials of the library for letting us use their facilities.

I know that you all who are attending have signed out our attendance record and request to speak, so I'm not going to go through all of that.

The Baltimore District U.S. Army Corps of Engineers is holding this public hearing to provide you, the public, an opportunity to express your views regarding our May 12, 2006 public notice, which describes the proposal that we'll be discussing tonight. This hearing will provide us additional

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1 information that we will consider in our evaluation of
2 the pending SPGP.

3 The subject of tonight's hearing is the
4 proposal described in the May 12th public notice, and
5 that is to modify the Maryland State Programmatic
6 General Permit Number Two, and issue it as the Maryland
7 State Programmatic General Three for a period of five
8 years. The federal laws that bring this proposal under
9 the jurisdiction of the Corps are Section 404 of the
10 Clean Water Act, and Section 10 of the Rivers and
11 Harbors Act of 1899.

12 Section 404 of the Clean Water Act and
13 Section 10 of the Rivers and Harbors Act of 1899
14 authorize the Secretary of Army, acting through the
15 Chief of Engineers, to issue general permits that
16 operate in conjunction with the State Regulatory
17 Program. These general permits are used to authorize
18 regulated activities in waters of the United States,
19 including jurisdictional wetlands and navigable waters,
20 provided that the activities authorized under the
21 general permit are similar in nature and result in no

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1 more than minimal individual and cumulative adverse
2 effects on the aquatic environment. We did have a
3 handout out at the sign in table that shows the Corps'
4 application evaluation process, and provides other
5 information about the Baltimore District on the reverse
6 side.

7 Our decision whether to issue the Maryland
8 State Programmatic General Permit Number Three will be
9 based on an evaluation of the probable impacts,
10 including cumulative impacts, of the proposed General
11 Permit on the public interest. The decision will
12 reflect the national concern for both protection and
13 utilization of important resources. We will also
14 balance the benefits which reasonably may be expected
15 to accrue from the General Permit against its
16 reasonably foreseeable detriments. We will consider
17 all factors which may be relevant to the proposal. The
18 criteria that we will consider in our decision include
19 the relative extent of the public and private need for
20 the proposed General Permit, the practicability of
21 using reasonable alternatives and methods to accomplish

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1 the objectives of the proposed General Permit, and the
2 extent and permanence of the beneficial and detrimental
3 effects that the proposed General Permit is likely to
4 have on public and private uses of regulated areas.

5 All right, now let me turn to the procedures
6 we'll follow for tonight's hearing. There will be no
7 questions, no interruptions of speakers. Basically, if
8 you have a statement that you want to make part of the
9 record, you don't have to read it. You can either
10 provide a written statement or come up here and provide
11 oral testimony. If you do provide oral testimony and
12 you have a written statement, I would suggest you leave
13 that with us, too. That way, you know, we have a
14 chance for a more accurate record. I'm going to use
15 the sign in sheets. We have two folks who were
16 interested in speaking tonight. So I will just call
17 your names in order that you signed up. When you come
18 up here to speak, I'd ask that you state your name,
19 your address, and any agency or group that you're
20 representing. I don't think we need to talk about
21 limiting your presentations since we are here till

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1 8:30.

2 (Laughter)

3 MALE VOICE: There's a lot of interest.

4 MS. VINE: Yeah. Your testimony tonight will
5 be recorded, and we will prepare a verbatim record of
6 tonight's hearing. If you'd like to receive a copy of
7 the transcript of these proceedings, please provide us
8 with your information on the attendance record at the
9 registration table. And once we have the verbatim
10 record, we can contact you and let you know its cost
11 and how we can provide you a copy of it. All oral and
12 written testimony that you provide tonight, as well as
13 written statements received no later than 5:00 p.m. on
14 June 26, 2006 will be made a part of the hearing
15 record. On that date, the record of this hearing will
16 be closed.

17 Okay, do we have any elected officials here
18 tonight? Okay. Then, I'm going to go ahead and call
19 speakers as you have signed up. And the first one is
20 Drew Koslow.

21 MR. KOSLOW: Hey there. My name is Drew

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1 Koslow. I'm the South Riverkeeper. I work for South
2 River Federation, we're a non-profit organization with
3 about 500 members. I'm also a wetlands scientist.
4 I've worked in the regulatory field under an MOA
5 between Fish and Wildlife Service, the Corps, and EPA
6 for several years back in the early '90's. I worked
7 with a local consulting firm for a couple years doing
8 wetland delineation and permitting, and so I have some
9 familiarity with the process.

10 I guess my address, I'll get back to that, is
11 6 Herndon Avenue, Annapolis, Maryland 21403. And any
12 other information you all needed?

13 MS. VINE: I think that's it.

14 MR. KOSLOW: Okay, thanks. I guess first of
15 all I want to state that, you know, I understand that
16 you all are dealing with shrinking resources. That
17 you're losing staff, staff aren't getting replaced, and
18 you're getting more and more permits to review, and
19 that it's a difficult job to look at these permits with
20 the kind of scrutiny that they deserve. To have the
21 opportunity to minimize impacts, to look at

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1 alternatives thoroughly.

2 That said, I'm not sure that the SPGP meets
3 some of the criteria that are set out in that, in the
4 document, when you, when you, and specifically
5 regarding the cumulative impacts of these projects, I
6 think that when you look at the bulkheading, you know,
7 bulkheading in the Bay, and the revetment that's taken
8 up like miles and miles of shoreline.

9 On the South River, probably half of the main
10 stem of the River is either bulkhead or revetment. And
11 when you see the wave energy from boat waves bouncing
12 off of bulkheads and scouring out shallow water habitat
13 that used to provide, used to be covered in SAV and
14 redhead grass, and to go out there now and there's not
15 a single blade of redhead grass in South River, it's
16 hard to agree that the impacts are not significant. I
17 think they're very significant, cumulatively. Even
18 when you're looking at 5000 square feet of fill for a
19 residential home.

20 There's a little community about 10 minutes
21 from here called Arundel on the Bay. It used to be an

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1 old, kind of summer cottages, and it's on a very low
2 lying peninsula that reaches out into the Bay. And it
3 was kind of sparsely populated with houses up on the
4 high ground, and lots of little pockets of non-tidal
5 wetlands all throughout the area. And in the last ten
6 years, there are no wetlands left on the whole
7 peninsula. And they used to hold, you know, they would
8 minimize flooding out there. You'd have your, you
9 know, flood storage, nutrient adsorption and
10 absorption. And right now there's no wetlands left.
11 There's houses, and that's it.

12 So, once again, the intent I think was a good
13 thing. The whole SPGP trying to give the State
14 authority to issue permits without having this double,
15 you know, duplication of effort. And I certainly see
16 from the perspective of a permittee or an applicant how
17 hard it must be to apply for a permit and have it, send
18 copies to the Corps, copies to the State, copies to the
19 County. They're like, what's going on here? So, I
20 understand it. But at the same time, I feel like we're
21 losing resource. And Maryland's already lost something

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1 like 70 percent of the non-tidal wetlands in the State.
2 It's, and these, the wetlands are the kidneys of the
3 Chesapeake. They're vital to its health. So, so I
4 think we really need to take a hard look at this
5 process, and figure out how to make it better.

6 So, thanks for your time and your effort. I
7 hate, you know, I was in the regulatory process, and
8 it's really hard. It's hard to be a part of it.
9 Thanks.

10 MS. VINE: Thank you. All right, our next
11 speaker is Jennifer Aiosa.

12 MS. AIOSA: Thank you. My name is Jennifer
13 Aiosa, it's A-I-O-S-A. And I am here on behalf of the
14 Chesapeake Bay Foundation. My work address is 6
15 Herndon Avenue, in Annapolis, Maryland, and I work for
16 the Bay Foundation as a Staff Scientist. And one of
17 the responsibilities I've had since working for the Bay
18 Foundation is following the regulatory and the
19 programmatic wetlands programs in the State of Maryland
20 for quite some time.

21 And so, I was actually really involved, I

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1 guess, five years ago, or more than five years ago when
2 we were trying to make the current version of the
3 Maryland State Programmatic General Permit better than
4 the first version. And one of the things that the
5 Chesapeake Bay Foundation was adamantly opposed to was
6 having large impact thresholds. I believe the first
7 version of this Permit had three and five acre
8 thresholds for non-tidal and tidal wetland impacts.
9 And the Bay Foundation felt so strongly that we were
10 prepared to take legal action if those were not
11 dramatically reduced. And so, we worked very hard to
12 get the current SPGP, I guess, SPGP Two that we now
13 have, which has a 5000 square foot cap, if you will,
14 for a category one activities, and then all the way up
15 to one acre impact thresholds for category three
16 activities.

17 So we're really discouraged, quite frankly,
18 to see that in our minds we're taking a step backwards
19 with this proposal for Version Three of the
20 Programmatic General Permit in seeing half acre and in
21 some cases acre impact thresholds for category one

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1 activities. We believe that that is a far stretch of
2 the term "minimal impact".

3 We do understand and support, I think in much
4 the same way that Drew and his organization
5 articulated, we support the idea of trying to find a
6 way to reduce the regulatory burden. Especially for
7 activities that are truly minimal in terms of their
8 impact to wetlands and waters. And there are a lot of
9 activities that fall under Category One, like repair of
10 bridge abutments, or things like that, that we truly
11 don't have a problem with in terms of trying to
12 expedite that review process.

13 However, we recognize that Category One
14 activities have little or no oversight, no opportunity
15 for other resource agencies to get involved, and no
16 opportunity for the public to get involved. And those
17 are really key shortcomings, in our opinion, in terms
18 of this proposed revision.

19 Again, there are several categories. We are
20 preparing a more extensive written comments that we
21 will be submitting for the record, but we did think

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1 this was important enough that I did want to come and
2 also give some oral testimony today. I will say that
3 we disagree with increasing these impact thresholds.
4 We don't believe that minor fills of a half an acre are
5 truly going to be protective of our wetland resources.
6 We really doubt the ability of either the federal
7 agencies or the state agencies to adequately assess the
8 cumulative nature that these kinds of impacts are going
9 to add up to. I think Drew used the example of, in the
10 cumulative, the number of bulkheads and shoreline
11 hardening projects. I think with this minor fill
12 category it wouldn't be unreasonable to assume that we
13 could see that kind of impact in terms of individual
14 housing development.

15 I guess I'm a little baffled by the
16 definition that is in this document that we've reviewed
17 about the single and complete projects. But it
18 completely excludes road projects, and a road project
19 that might cross a stream, or a watercourse, or a
20 wetland in multiple areas, that itself isn't considered
21 a single and complete project. Each crossing is a

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1 single and complete project. So one road project, or
2 one large highway modification, could be devastating.

3 And I know that in the State of Maryland,
4 we're seeing increased pressures on our resources.
5 We're seeing land conversion and population increase
6 just sort of exploding. Like Drew said, we can
7 appreciate the fact that the agencies are taxed in
8 terms of staff resources that you can allocate to this
9 kind of permit review. But we really don't think that
10 this is the time to be taking a step backwards.

11 A lot of our state and federal agencies
12 signed onto the Chesapeake 2000 agreement. And we had
13 fantastic targets, and really necessary goals in terms
14 of protecting and restoring our aquatic resources,
15 including wetlands. And we think that this proposal
16 that's on the table right now for the third version of
17 the Programmatic General Permit is not only not going
18 to help us get to those goals, it's probably going to
19 take us in a step backwards.

20 I appreciate the opportunity. Thank you.

21 MS. VINE: Thank you. Is there anybody else

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1 who'd like to speak? All right, again, just let me
2 remind you that the public hearing record will remain
3 open until 5:00 p.m. on June 26, 2006. Written
4 comments may be submitted to the attention of Beth
5 Bachur, and her address is provided on the public
6 notice.

7 Again, I appreciate your interest, and the
8 fact that you attended this public hearing tonight.
9 And that's it. The hearing's adjourned.

10 (Whereupon, the above-mentioned hearing
11 was concluded at 7:20 p.m.)

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